No. 80-1035

Supreme Court of the United States

October Term, 1980

J. C. REDD, Et Al.,
Petitioners,

vs.

A. C. LAMBERT, Chairman, State Tax Commission of the State of Mississippi, Et Al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

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STATEMENT OF THE CASE

This case finds its inception in two consolidated actions, each such action being filed by Mississippi resident property owners, disputing the implementation of the Mississippi statutory ad valorem tax system. There was no constitutional challenge to any of the Mississippi tax statutes or administrative procedures.

Louis Fondren, et al. initiated the first action against the State Tax Commission, et al. (hereinafter referred to

as Commission), in Mississippi Chancery Court (hereinafter referred to as trial court), seeking statewide assessment equalization pursuant to Mississippi statutory procedures. Thereafter, a demurrer was interposed by the Commission and sustained by the trial court. Fondren, et al. appealed this ruling to the Supreme Court of Mississippi which, on August 31, 1977, reversed the trial court and remanded, holding that Fondren, et al. was entitled to relief under state law upon proof of alleged facts.

On November 4, 1977, J. C. Redd, et al., Petitioners herein, filed an identical action in the same trial court seeking the identical relief sought by Fondren, et al. under state statutory remedies and also under 42 U.S.C. § 1983. The 42 U.S.C. § 1983 action was alleged even though Petitioners were aware that the Supreme Court of Mississippi had held that the relief sought, on proof of facts, could and should be granted pursuant to state law.

The trial court consolidated the two actions, and thereafter granted relief, under state law, to both the Fondren and Redd litigants, with the Redd litigants also obtaining an award of attorney fees.

The Commission appealed the decision of the trial court to the Supreme Court of Mississippi, which Court affirmed in part, reversed in part, and modified the trial court's decision.

None of the parties to the litigation disputes the substantive relief granted under state law.

This Petition is laid on the question of whether attorney fees must be granted to state litigants who initiate tax disputes in Mississippi Courts.

SUMMARY OF ARGUMENT

The substantive adequacy of the Mississippi statutory and equitable tax dispute procedures is evidenced by this Petition, i.e., no challenge is made in regard to relief granted Petitioners by state court pursuant to state law. The sole question presented to this Court by Petitioners is whether or not attorney fees should be granted to state litigants in tax dispute proceedings in the state forum.

Adequate state tax dispute procedures (Administrative and Judicial), not here challenged by Petitioners, must function under established rules and in a manner which follows precisely the logical sequence of events concerning taxation. To proceed otherwise would result in the inability of the state tax agencies to discharge their responsibilities in accordance with state procedure.

Petitioners seek to disrupt Mississippi's adequate tax procedure, by allowing a taxpayer to circumvent established state procedure by the filing of a 42 U.S.C. § 1983 action in the state forum. This disruption sought by Petitioners is not because of inadequate tax dispute procedures, but solely for benefit of resulting attorney fees.

The Supreme Court of Mississippi recognized the disorder that would result in tax dispute issues if a 42 U.S.C. § 1983 action were maintainable in the state forum, where there already existed an adequate and orderly state remedy. This result is consistent with the basis Congress utilized in the passage of 28 U.S.C. § 1341 and the peculiar needs of tax administration.

The Supreme Court of Mississippi recognizes its responsibility to entertain concurrent jurisdiction of 42 U.S.C. § 1983 actions; however, as a state policy decision, the Mississippi Court correctly held that in the sole area of

state taxation, where state remedies are adequate, a 42 U.S.C. § 1983 action would not be entertained, and taxpayers must obtain relief in an orderly process under state law.

REASONS FOR DENYING THE WRIT

I. United States Court of Appeal's Decisions Do Not Conflict With the Decision of the Supreme Court of Mississippi and Resulting Substantive Relief.

Petitioners are noticeably satisfied with the substantive State remedy granted by the State courts pursuant to and upon issues of State law.[1] The only source of dissatisfaction is the failure of the Supreme Court of Mississippi to award Petitioners attorney fees. The question of whether attorney fees should be granted to state litigants contesting the peculiar vagaries of Mississippi taxation in state courts is singularly routine and important only from a local perspective.

The United States Court of Appeals cases cited by Petitioner (Pet. 13) are not in conflict with the opinion of the Mississippi Supreme Court. *28 East Jackson Enterprises, Inc. v. Cullerton,* 551 F.2d 1093 (7th Cir. 1977), cert. den. 434 U.S. 835, and *Coon v. Teasdale,* 567 F.2d 820 (8th Cir. 1977) relied upon by Petitioners do not stand for the proposition that a cause of action in state

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1. Petitioners (Pet. 4, n. 3) correctly state that two cases were consolidated in the trial court—(1) The *Fondren,* et al. litigants and (2) The *Redd,* et al. litigants (Petitioners herein). Petitioners neglect to point out that both the *Fondren* litigants and *Redd* litigants sought substantially identical relief except that the *Redd* litigants (Petitioners herein) sought attorney fees. It further should be noted that the *Fondren* litigants pioneered the lower case with the *Redd* litigants (Petitioners herein) initiating their suit long after the *Fondren* litigants. (See Pet. App. A1 through A3). Obviously the *Fondren* litigants also were satisfied by the substantive State remedy granted below.

court to vindicate federal rights is by necessity a 42 U.S.C. § 1983 action. In fact, both of these cases support the Supreme Court of Mississippi's position that adequate, speedy and plain state remedies, in tax dispute issues, bars federal jurisdiction pursuant to 28 U.S.C. § 1341. The question presented in this Petition was not present in *LaSalle National Bank v. Rosewell,* 604 F.2d 530, 537 (7th Cir. 1979), cert. granted ..... U.S. ....., 100 S.Ct. 1310, 63 L.Ed.2d 758 (1980), and consequently *LaSalle National Bank* does not present the instant question to this Court. Moreover, *Sacks Bros. Loan Co., Inc. v. Cunningham,* 578 F.2d 172 (7th Cir. 1978), is demonstrative of the federal deference to state tax remedy procedures, if such are speedy, plain and adequate, and in no way provides dicta that a taxpayer, in order to vindicate federal rights, must be allowed to maintain a 42 U.S.C. § 1983 action in the State forum.

II. Adequate and Orderly State Tax Dispute Procedures Justify the Policy Decision of the Supreme Court of Mississippi.

The real issue presented by the Petitioners is not the broad issue of whether or not the Mississippi courts will entertain 42 U.S.C. § 1983 actions,[2] but whether, in a posture unique to Mississippi taxation, 42 U.S.C. § 1983 actions are maintainable in Mississippi courts to enjoin and restrain the collection of Mississippi taxes.

Mississippi tax statutes create detailed administrative and judicial procedures, which afford taxpayers an adequate, plain, speedy, and efficient state remedy to resolve

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2. Mississippi recognizes that its state courts have concurrent jurisdiction with the federal courts in 42 U.S.C. § 1983 actions. *State Tax Commission v. Fondren,* 387 So.2d 712, 723 (Miss. 1980).

state tax disputes. *Matthews v. Rodgers,* 284 U.S. 521, 52 S.Ct. 217, 76 L.Ed. 447 (1932); *Bland v. McHann,* 463 F.2d 21 (5th Cir. 1972), cert. den. 410 U.S. 966, 93 S.Ct. 1438, 35 L.Ed.2d 700 (1973).

The Mississippi tax statutes, and the dispute procedures which they create, were scrutinized and approved as adequate in *Bland v. McHann,* supra; the *Bland* court also concluded that 42 U.S.C. § 1983 collides full force with the congressional limitations imposed by 28 U.S.C. § 1341 when a State court remedy, like the Mississippi procedure, is adequate, thus precluding federal intervention in State tax disputes.

A State court remedy, in tax dispute issues, does not necessarily include the availability of a 42 U.S.C. § 1983 action, since an adequate State court remedy need not be "equal to or better than the remedy which might be available in the federal courts". *Bland v. McHann,* 463 F.2d 21, 29 (5th Cir. 1972), cert. den. 410 U.S. 966, 93 S.Ct. 1438, 35 L.Ed.2d 700 (1973).

Accordingly, the unique and special needs of a state in the operation of an efficient taxing system mandate that the state must be allowed to follow exclusively its established state procedures, if such are adequate. *First National Bank v. Board of County Commissioners,* 264 U.S. 450, 44 S.Ct. 385, 68 L.Ed. 784 (1924).

Congress, by enacting 28 U.S.C. § 1341, recognized the unique individual needs of each state in the operation of its taxing process, and declared a statutory policy of federal judicial non-intervention. Thus, Congress sanctioned the pre-existing federal equity practices, which, according to *First National Bank v. Board of County Commissioners,* supra, leaves taxpayers to their exclusive state remedies. *Moe v. Salish & Kootenai Tribes,* 425 U.S. 463, 470, 96 S.Ct. 1634, 48 L.Ed.2d 96, 104 (1976).

The Supreme Court of Mississippi concluded that state procedures, which are adequate, plain, and speedy, should be the exclusive remedy to taxpayers in state tax disputes, thus precluding the maintenance of pendent 42 U.S.C. § 1983 actions in state proceedings. This policy decision of the Mississippi Court, excluding 42 U.S.C. § 1983 actions in state courts, is limited solely to tax dispute cases. As heretofore noted, Mississippi recognizes its responsibility to entertain concurrent jurisdiction of 42 U.S.C. § 1983 actions which are not brought to restrain the collection of state taxes.

The decision of the Mississippi Court is correct; to hold otherwise would be doing exactly what this Court and Congress intended to prevent—allowing federal intervention in the form of a 42 U.S.C. § 1983 action in state courts to circumvent established state administrative and judicial procedures in tax administration.

III. Intrinsic Attributes of State Taxation Preclude Interjection of Incompatible Federal Remedy Into Adequate Tax Dispute Procedure.

It is a well-established principle that litigants, in 42 U.S.C. § 1983 actions, need not exhaust state administrative or judicial remedies before initiating suit. *McNeese v. Board of Education,* 373 U.S. 668, 672, 83 S.Ct. 1433, 10 L.Ed.2d 622, 625 (1963). The availability of a 42 U.S.C. § 1983 in Mississippi State Courts, in actions to restrain taxation, would allow taxpayers to ignore, thus circumvent, established State administrative and judicial tax procedures, even though State proceedings are adequate, plain and speedy. These State administrative and judicial procedures are the touchstones of the state's taxation system, and this Court has recognized this precept in *First National Bank v. Board of County Commissioners,* 264 U.S. 450, 44 S.Ct. 385, 68 L.Ed. 784 (1924).

The concurrent jurisdiction espoused by Petitioners, which would make 42 U.S.C. § 1983 actions maintainable in tax disputes in Mississippi Courts, is incompatible with the intrinsic attributes of the state's taxation system.

Although the general principle is that state and federal courts enjoy concurrent jurisdiction to enforce federal law, this Court has long recognized an exception to this principle when the federal law is incompatible with the peculiar "nature of the particular case". *Claflin v. Houseman,* 93 U.S. 130, 136, 23 L.Ed. 833 (1876). The reasoning and conclusion in *Claflin v. Houseman* apply with equal force in the instant case.

IV. Circumvention of Adequate State Tax Dispute Procedures Is Prohibited.

State taxation is the means by which a state funds its existence. This Court has long recognized that the taxing power of a state is one of its inherent attributes of existing independently of the United States Constitution, whereby the state's legislature formulates the state's taxing policies; and, that the federal Constitution, in such matters, must be practically construed so as not to destroy the necessary power of the state nor prevent its efficient exercise. *Union Pacific Railroad Company v. Peniston,* 18 Wall. 5, 29, 85 U.S. 5, 29, 21 L.Ed. 787, 791 (1873).

This policy of federal non-intervention in the state regulated activity of taxation is manifest in the passage of 28 U.S.C. § 1341, which act forbids United States District Courts from exercising jurisdiction over actions to enjoin state taxation, except in exceptional circumstances.

Petitioners concede that 28 U.S.C. § 1341 precluded them from initially litigating this action in the federal

courts under 42 U.S.C. § 1983 (Pet. 13); however, Petitioners maintain that a Section 1983 cause of action is maintainable in a state forum although precluded in a federal forum. Petitioners' contention is erroneous, as heretofore addressed, because of the incompatibility of 42 U.S.C. § 1983 and the Mississippi taxing procedure.

Petitioners further advance the proposition that a state court, in the formulation of a tax dispute remedy, be required throughout to apply federal law. This proposition would allow a taxpayer to ignore established and adequate state tax procedures and file a 42 U.S.C. § 1983 action in the state forum. A classic example of such is the taxpayer who ignores administrative protest and appeal procedures concerning assessments and initiates a 42 U.S.C. § 1983 action in the state court, thus circumventing the adequate and orderly state procedures. This proposition of Petitioners is no less incursion into state autonomy than an action in federal court.

The Fifth Circuit in *Bland v. McHann*, 463 F.2d 21, 26, N.21 (5th Cir. 1972), cert. den. 410 U.S. 966, 93 S.Ct. 1438, 35 L.Ed.2d 700 (1973), observed that the mass assessment and collection procedures for state taxation and the resulting dispute procedures are intricate and necessarily designed to follow established rules. Further, the availability of federal relief to test state tax assessments would disrupt the state tax procedure as the taxpayer could avoid the orderly and established state procedures. The *Bland* court also noted that federal intervention could obstruct state revenue and ultimately, damage the state's budget.

The mere presence of this Petition for Certiorari in this Court conclusively demonstrates the tautological elegance of this proposition.

CONCLUSION

The Petition for Certiorari should be denied.

CERTIFICATE

The undersigned, one of the Attorneys for Respondents herein, do hereby certify that I have this day caused to be served a true and correct copy of the foregoing Brief of Respondents in Opposition to Petition For Certiorari on the following:

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This the 19th day of January, 1981.

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